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Report of the International Law Commission on the work of its fifty-sixth session

Letter dated 12 July 2004 from the Chargé d'affaires a.i. of the Permanent Mission of Cuba to the United Nations addressed to the Secretary-General

I have the honour to annex hereto a copy of the observations which the Government of the Republic of Cuba submitted recently pursuant to paragraph 3 of General Assembly resolution 58/77 inviting Governments to provide information to the International Law Commission regarding State practice on the topic "Unilateral acts of States" (see annex).

I should be grateful if you would have this letter and its annex circulated as a document of the General Assembly under item 148 of the preliminary list of items on the agenda of the fifty-ninth session.

(*Signed*) Rodney **López Clemente**
Ambassador
Deputy Permanent Representative
Chargé d'affaires a.i.

* A/59/50 and Corr.1.

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Annex to the letter dated 12 July 2004 from the Chargé d'affaires a.i. of the Permanent Mission of Cuba to the United Nations addressed to the Secretary-General

For the purposes of complying with paragraph 3 of General Assembly resolution 58/77, of 9 December 2003, inviting Governments to provide information to the International Law Commission regarding State practice on the topic "Unilateral acts of States", the Government of the Republic of Cuba wishes to transmit the following observations:

The Republic of Cuba has reaffirmed on a number of occasions the fundamental importance it attaches to the topic "Unilateral acts of States", which is under consideration by the International Law Commission, and the need to move forward in its codification and progressive development.

The Republic of Cuba wishes to draw the attention of the International Law Commission to unilateral acts which violate international law and the Charter of the United Nations, such as the use of unilateral extraterritorial coercive economic measures as a means of political and economic compulsion, the aim of which is to undermine the sovereign rights of other States.

A clear example of unilateral acts of this type is the economic, commercial and financial embargo imposed by the United States of America against Cuba, which has been broadly rejected by the international community on numerous occasions, as shown by the 13 resolutions adopted by the General Assembly on this topic, and other instruments.[a]

While the United States embargo against Cuba is composed of a complex jumble of legislative provisions of a varying legal nature, the Republic of Cuba wishes to draw the attention of the International Law Commission to the so-called "Helms-Burton Act", adopted by the United States Government on 12 March 1996.

The adoption of the Helms-Burton Act by the United States Government has all the characteristics necessary to be regarded as a unilateral act for the purposes of international law, since it meets the criteria of autonomy, publicity and production of legal effects, which are recognized in legal doctrine as the identifying components of such acts.

In the unilateral act to which we refer, the characteristic of autonomy is present in the two senses mentioned by the Special Rapporteur in his reports. What is involved is an act which was not carried out on the basis of a pre-existing norm of international law and whose formulation depended exclusively on the expression of will of the United States Government.

In addition, the characteristic of publicity required in order to classify an act as unilateral is present in the adoption of the Helms-Burton Act. What is involved is an act which has been widely disseminated and made known, which received due publicity in accordance with United States laws, and which, in addition, has been the subject of repeated pronouncements by the international community, the United States authorities and the Cuban Government and people.

With regard to its legal effects, it should be noted that this Act violates universally recognized norms and principles of international law.

In purporting to regulate matters exclusively within the competence of the Cuban people, such as the form of government, the economic, political and social system of the country, and the institutions governing the life of the nation, the United States Government is violating the principles of sovereign equality of States, non-intervention in matters which are essentially within the domestic jurisdiction of States, equal rights and self-determination of peoples, all of which are set out in Chapter I of the Charter of the United Nations.

In addition, the aforementioned Act is distinctly extraterritorial in nature. By means of the Act, the United States Government took upon itself the illegal and illegitimate right to legislate on behalf of and for other countries in their relations with Cuba, even to the extent of granting itself the power to certify the conduct and actions of other States and their nationals not subject to United States jurisdiction.

The extraterritorial nature of this Act has been recognized in, inter alia, the opinion of the Inter-American Juridical Committee, issued pursuant to the provisions of resolution AG/doc.3375/96 of the General Assembly of the Organization of American States, entitled "Freedom of trade and investment in the hemisphere". This opinion, referring to provisions of the Helms-Burton Act, concludes, inter alia, that "the exercise of such jurisdiction over acts of `trafficking in confiscated property' does not conform with the norms established by international law for the exercise of jurisdiction".[b]

Moreover, it should be noted that in purporting not to recognize the nationalization process which took place in Cuba in the 1960s and was carried out with strict adherence to the principle of legality, the United States Government is violating the right of the Republic of Cuba to national sovereignty over its natural resources, as well as its sovereign right to carry out forced expropriation for reasons of public interest, or confiscation of property that derives from the participation of its owners in activities illegal under its domestic law.

Other widely accepted international principles which the Act violates include freedom of financing and investment, subordination of subsidiary companies to the laws of the country in which they reside, recognition of control over a property in accordance with the laws of the country in which it is located, and non-jurisdiction of international courts or third countries over what a country confiscates from its nationals.

The international community has rejected on innumerable occasions the application by States of unilateral extraterritorial coercive economic measures as a means of political and economic compulsion because they violate the principles of international law, the Charter of the United Nations and the principles, objectives and norms of the World Trade Organization.

The international conferences and world summits sponsored by the United Nations on economic and social topics have also rejected such practices because they impede the full exercise of the right of peoples to development and affect the positive evolution of international economic cooperation for development.

The United Nations General Assembly has also repeatedly rejected the encouragement of the use by any State of such measures and other similar measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights. The Assembly has affirmed that the enactment of such laws constitutes interference in the internal affairs of States and a violation of their

sovereignty and that it is incompatible with instruments such as the Charter of Economic Rights and Duties of States, adopted by the General Assembly in its resolution 3281 (XXIX), of 12 December 1974.

In the opinion of the Republic of Cuba, the International Law Commission should also devote time and energy to the analysis and study of unilateral acts of this type, with a view to developing a broad perspective that can help to encourage certitude, legality and legitimacy in relations between States.

Notes

[a] Resolutions 47/19, of 24 November 1992, 48/16, of 3 November 1993, 49/9, of 26 October 1994, 50/10, of 2 November 1995, 51/17, of 12 November 1996, 52/10, of 5 November 1997, 53/4, of 14 October 1998, 54/21, of 9 November 1999, 55/20, of 9 November 2000, 56/9, of 27 November 2001, 57/11, of 12 November 2002, and 58/7, of 4 November 2003.

[b] For the purposes of the Helms-Burton Act, a person "traffics" in confiscated (nationalized) property if that person transfers, distributes, dispenses, purchases, receives, acquires, improves, invests in, manages, leases, possesses or uses it, or enters into a commercial arrangement using or otherwise benefiting from confiscated property, or causes or directs the trafficking described.